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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

TECH CENTER 1600/2900

In re Application of:

**Thomas Quertermous et al.**

Serial No. 09/237,981

Filed: January 25, 1999

For: **ANTIBODIES BINDING TO POLYPEPTIDES  
ENCODED BY DEVELOPMENTALLY-  
REGULATED ENDOTHELIAL CELL LOCUS-1**

Group Art Unit: 1646

Examiner: Michael D. Pak

#9/50  
7-3-01

Commissioner for Patents  
Washington, D.C. 20231

Dear Honorable Commissioner:

**ELECTION OF CLAIMS**

Applicants hereby respond to the Office Action mailed March 13, 2001. Submitted concurrently herewith is a request for a two-month extension of time. However, if a further extension of time is required, please consider this a request for the same and charge the appropriate fees to Deposit Account 12-2475.

In the Office Action, the Examiner has required Applicants to elect a group from Group I (claims 34-39), Group II (claims 40-41, and 64-65), Group III (claims 42-47), Group IV (claims 48-49), Group V (claims 50-55, 58-63), and Group VI (claims 56-57, 64-65) for examination in this application. Applicants hereby elect Group V (claims 50-55 and 58-63), but request a waiver of the restriction.

**CERTIFICATE OF MAILING**  
(37 C.F.R. §1.8a)

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as First Class Mail in an envelope addressed to the Commissioner for Patents, Washington, D.C. 20231.

Date of Deposit  
LA-196349.1

June 11, 2001

Name of Person Mailing Paper

Signature of Person Mailing Paper

Melody K. Gutierrez

[Signature]

Although Applicants have made an election as required by the Examiner, Applicants respectfully request the Examiner to partially waive the restriction (as to Groups I, III, and V) because the examination of these groups in one application is reasonable, would not unduly burden the Examiner, and will aid Applicants in protecting their intellectual property:

To further aid the biotechnology industry in protecting its intellectual property without creating an undue burden on the Office, the Commissioner has decided *sua sponte* to partially waive the requirements of 37 CFR §1.141 et seq. and permit a reasonable number of such nucleotide sequences to be claimed in a single application.... It has been determined that normally ten sequences constitute a reasonable number for examination purposes. Accordingly in most cases, up to ten independent and distinct nucleotide sequences will be examined in a single application without restriction.

MPEP § 803.04 [Emphasis Added].

Groups I, III, and V are directed toward antibodies that bind to polypeptides, classified in Class 530, subclass 387.1. Group I (claims 34-39) is directed an antibody that bind the polypeptide of SEQ. ID. NO. 10. Group II (claims 42-47) is drawn to an antibody which binds to SEQ. ID. NO. 29. And, Group V (claims 50-55 and 58-63) is directed to an antibody that binds to SEQ. ID. NO. 14. Examination of these three groups together is reasonable and not unduly burdensome because the underlying amino acid sequences are related. Groups I, III and V are all directed to antibodies that bind to various forms of the amino acid sequence for the human and murine Developmentally Related Endothelial Cell Locus (DEL-1).

As provided by the MPEP § 803.04, "[i]t has been determined that normally ten sequences constitute a reasonable number for examination purposes." Groups I, III, and V only relate to four sequences. Because of the high homology of the sequences<sup>1</sup>, Applicants

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<sup>1</sup> Human and murine DEL-1 are about 94% homologous in their amino acid sequence. Specification page 48, lines 21-27.

respectfully submit that examination of these groups together is reasonable and will not unduly burden the Examiner.

Applicants understand that MPEP §803.04 expressly provided a waiver to examination of multiple nucleotide sequences in one application, but did not explicitly address amino acid sequences. However, given the relationship between the nucleic acid sequence and amino acid sequences, the rationale for waiving the restriction requirement for nucleic acid sequences reasonably applies to claims having amino acid sequence limitations.

### CONCLUSION

Based on MPEP § 803.04 that allows for a reasonable number of sequences to be examined in one application, Applicants respectfully request the Examiner to partially waive the restriction requirement as to Groups I, III, and V, and allow these groups to be examined together.



Respectfully submitted,

LYON & LYON LLP

Dated: June 11, 2001

By: Michael J. Wise

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